

From: [Director Discretionary Decision](#)
To: [Director Discretionary Decision](#); [Marando, Christopher \(WDC\)](#); [Jason Eisenberg](#); [Director DI](#); [Trials](#)
Cc: [kaiser-ptab@perkinscoie.com](#); [Marando-ptab@perkinscoie.com](#); [lembo-ptab@perkinscoie.com](#); [Beigelmacher-ptab@perkinscoie.com](#); [Fowler-ptab@perkinscoie.com](#); [Microsoft-Sandpiper-IPR@perkinscoie.com](#); [Rose, Kate \(Perkins Coie\)](#); [PTAB Account](#); [Daniel Block](#); [Kristina Caggiano Kelly](#); [Amirali Sharifi](#); [Steve Pappas](#); [Wenhao Xiong](#); [Chris Kim](#)
Subject: RE: IPR2026-00174, IPR2026-00180, IPR2026-00190 -Request for Authorization for Patent Owner Reply to Petitioner Opposition Briefs
Date: Tuesday, April 14, 2026 4:22:34 PM
Attachments: [image001.png](#)
[image002.png](#)

Counsel-

Please see the corrected response.

Patent Owner may file a 3-page reply in IPR2026-00174, IPR2026-00180, and IPR2026-00190, due no later than Thursday, April 16, 2026, limited to addressing the matters raised below. Petitioner is authorized a 3-page sur-reply, due no later than Monday, April 20, 2026.

From: Director_Discretionary_Decision <Director_Discretionary_Decision@uspto.gov>
Sent: Tuesday, April 14, 2026 3:03 PM
To: Marando, Christopher (WDC) <CMarando@perkinscoie.com>; Jason Eisenberg <jasone@sternekessler.com>; Director_DI <Director_DI@uspto.gov>; Director_Discretionary_Decision <Director_Discretionary_Decision@uspto.gov>; Trials <Trials@USPTO.GOV>
Cc: kaiser-ptab@perkinscoie.com; Marando-ptab@perkinscoie.com; lembo-ptab@perkinscoie.com; Beigelmacher-ptab@perkinscoie.com; Fowler-ptab@perkinscoie.com; Microsoft-Sandpiper-IPR@perkinscoie.com; Rose, Kate (Perkins Coie) <KateRose@perkinscoie.com>; PTAB Account <PTAB@sternekessler.com>; Daniel Block <DBLOCK@sternekessler.com>; Kristina Caggiano Kelly <kckelly@sternekessler.com>; Amirali Sharifi <ASHARIFI@sternekessler.com>; Steve Pappas <SPAPPAS@sternekessler.com>; Wenhao Xiong <WXiong@sternekessler.com>; Chris Kim <CYKIM@sternekessler.com>
Subject: RE: IPR2026-00174, IPR2026-00180, IPR2026-00190 -Request for Authorization for Patent Owner Reply to Petitioner Opposition Briefs

Patent Owner may file a 5-page reply in IPR2026-00174, IPR2026-00180, and IPR2026-00190, due no later than Thursday, April 16, 2026, limited to addressing the matters raised below. Petitioner is authorized a 5-page sur-reply, due no later than Monday, April 20, 2026.

From: Marando, Christopher (WDC) <CMarando@perkinscoie.com>
Sent: Monday, April 13, 2026 3:50 PM
To: Jason Eisenberg <jasone@sternekessler.com>; Director_DI <Director_DI@uspto.gov>; Director_Discretionary_Decision <Director_Discretionary_Decision@uspto.gov>; Trials <Trials@USPTO.GOV>

Cc: kaiser-ptab@perkinscoie.com; Marando-ptab@perkinscoie.com; lembo-ptab@perkinscoie.com; Beigelmacher-ptab@perkinscoie.com; Fowler-ptab@perkinscoie.com; Microsoft-Sandpiper-IPR@perkinscoie.com; Rose, Kate (Perkins Coie) <KateRose@perkinscoie.com>; PTAB Account <PTAB@sternekessler.com>; Daniel Block <DBLOCK@sternekessler.com>; Kristina Caggiano Kelly <kckelly@sternekessler.com>; Amirali Sharifi <ASHARIFI@sternekessler.com>; Steve Pappas <SPAPPAS@sternekessler.com>; Wenhao Xiong <WXiong@sternekessler.com>; Chris Kim <CYKIM@sternekessler.com>

Subject: RE: IPR2026-00174, IPR2026-00180, IPR2026-00190 -Request for Authorization for Patent Owner Reply to Petitioner Opposition Briefs

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Dear Director Squires,

Petitioner opposes Patent Owner's request for authorization to file replies in IPR2026-00174, IPR2026-00180, and IPR2026-00190.

Petitioner provided its position to be included in a joint email, but Patent Owner would not agree to include Petitioner's position aside from stating that Petitioner opposes.

As an initial matter, Petitioner objects to Patent Owner's email because the email effectively submits the substance of Patent Owner's reply arguments before Patent Owner has demonstrated good cause and obtained authorization. Interim Director Discretionary Process, §IV.A ("A reply and a sur-reply to discretionary briefs are not authorized by default. A patent owner must demonstrate good cause for authorization to file a reply.").

Moreover, there is no good cause for Patent Owner's request because there are no misrepresentations or misstatements to correct.

Petitioner's discretionary denial opposition briefs argued that the entity Sandpiper CDN, LLC—not Andrew Swart—has no connection to the technology described in the challenged patents because Sandpiper CDN, LLC did not exist until 2024. Patent Owner does not dispute the fact that Sandpiper CDN, LLC did not exist until 2024. Instead, Patent Owner disagrees with Petitioner's argument, which does not establish good cause. Petitioner's argument in each proceeding is excerpted below.

- IPR2026-00174, Paper 8, 1:
"PO is a Delaware entity incorporated in 2024 for the apparent purpose of acquiring the '692 patent and other patents from Level 3 Communications, LLC."

EX1024 (incorporation in March 2024); EX1025 (April 2024 assignment). PO alleges that a ‘predecessor’ developed the content-delivery network technology described in the ‘692 patent. Paper 7, 2 (‘DD’). However, given that PO did not exist until 2024, it has no connection to the technology, apart from its recent purchase of patents including the ‘692 patent years after it issued.”

- IPR2026-00180, Paper 10, 1:

“PO is a Delaware entity incorporated in 2024 for the apparent purpose of acquiring the ‘173pat and other patents from Level 3 Communications, LLC. EX1024 (3/2024 incorporation); EX1025 (5/2024 assignment). PO alleges a ‘predecessor’ developed content-delivery network technology described in the ‘173pat. Paper 8 (‘DD’), 2. However, PO did not exist until 2024, and it has no connection to the technology apart from its recent patent purchases.”

- IPR2026-00190, Paper 9, 1:

“PO is a Delaware entity incorporated in 2024 for the apparent purpose of acquiring the ‘053 patent and other patents from Level 3 Communications, LLC. EX1061 (incorporation in March 2024); EX1036 (May 2024 assignment). PO alleges that a ‘predecessor’ developed the content-delivery network technology described in the ‘053 patent. Paper 6, 2 (‘DD’). However, given that PO did not exist until 2024, it has no connection to the technology, apart from its recent purchase of patents including the ‘053 patent years after it issued.”

Even if Patent Owner could establish good cause (it cannot), Patent Owner’s proposed reply arguments are improper because they are neither responsive nor relevant. Petitioner’s discretionary denial opposition briefs do not even mention Andrew Swart (nor do Patent Owner’s discretionary denial briefs). Despite this, Patent Owner proposes to argue in reply that Andrew Swart has a connection to the technology at issue. Specifically, even though Andrew Swart is not a named inventor on the challenged ‘692, ‘173, or ‘053 patents, Patent Owner proposes to argue that Mr. Swart worked at alleged predecessor companies and allegedly invented technology in other patents, including patents “incorporated by reference” into the challenged patents. Patent Owner also proposes to make a new and uncorroborated argument that Sandpiper CDN, LLC acquired “CDN software” that Andrew Swart and his team allegedly developed. These arguments regarding Andrew Swart do not respond to Petitioner’s argument, which is that Sandpiper CDN, LLC has no connection to the technology described in the challenged patents because Sandpiper CDN, LLC did not exist until 2024. Patent Owner’s arguments are also irrelevant because they do not establish that Andrew Swart has a specific connection to the technology claimed in the challenged patents.

At bottom, Patent Owner seeks to supplement the record with new arguments that are not responsive to Petitioner's argument and are irrelevant. Patent Owner had the opportunity to include these arguments in its discretionary denial briefs and chose to say nothing about Andrew Swart or Sandpiper CDN, LLC's alleged acquisition of CDN software. It is improper for Patent Owner to seek to inject these arguments into these proceedings now. See Interim Director Discretionary Process, §II.C ("In its brief, the patent owner should argue with particularity the circumstances that warrant discretionary denial."); *id.*, §I.H ("[I]f a patent owner wishes to raise any applicable bases for discretionary denial, it must do so in a discretionary denial brief.").

If the Director nevertheless authorizes Patent Owner to file replies, Petitioner respectfully requests authorization to submit equal length sur-replies within five business days of Patent Owner's replies.

Respectfully,

Christopher Marando
PARTNER

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From: Jason Eisenberg <jasone@sternekessler.com>
Sent: Monday, April 13, 2026 3:16 PM
To: Director_DI@uspto.gov; Director_Discretionary_Decision <Director_Discretionary_Decision@uspto.gov>; Trials <Trials@USPTO.GOV>
Cc: *Kaiser Ptab <kaiser-ptab@perkinscoie.com>; *Marando-ptab <Marando-ptab@perkinscoie.com>; *Iembo-ptab <lembo-ptab@perkinscoie.com>; *Beigelmacher-ptab <Beigelmacher-ptab@perkinscoie.com>; *Fowler-ptab <Fowler-ptab@perkinscoie.com>; *Microsoft-Sandpiper-IPR <Microsoft-Sandpiper-IPR@perkinscoie.com>; Rose, Kate (PAO) <KateRose@perkinscoie.com>; PTAB Account <PTAB@sternekessler.com>; Daniel Block <DBLOCK@sternekessler.com>; Kristina Caggiano Kelly <kckelly@sternekessler.com>; Amirali Sharifi <ASHARIFI@sternekessler.com>; Steve Pappas <SPAPPAS@sternekessler.com>; Wenhao Xiong <WXiong@sternekessler.com>; Chris Kim <CYKIM@sternekessler.com>
Subject: IPR2026-00174, IPR2026-00180, IPR2026-00190 -Request for Authorization for Patent Owner Reply to Petitioner Opposition Briefs
Importance: High

Director,

Patent Owner requests authorization to file a 3-page Reply to Petitioner's Discretionary Denial Oppositions in the above-noted IPR proceedings, within 3-5 business days of the Director's authorization to file, to address misrepresentations made by Microsoft in their Opposition Briefs in at least Section II.A. Specifically, Sandpiper CDN wishes to correct a factual misstatement in at least Section II.A in which Petitioner alleges that Sandpiper CDN, LLC "has no connection to the technology, apart from its recent purchase of patents including the ['053, '173, '692] patent years after it issued."

The issues Sandpiper would like to clarify through a Reply are at least:

1. Microsoft raised this lack of connection between companies for the first time in each of the three proceedings in its Opposition briefs, and that is why Sandpiper should be authorized to respond.
2. Andrew Swart developed the Sandpiper content delivery network system, which all of the patents are connected to, and that he co-founded and co-owned all of the Sandpiper companies in question, both of which are true whether or not he was listed as an inventor on all patents.
3. Sandpiper has evidentiary proof for each of the points raised in our email that we will make clear are relevant to be introduced in an authorized reply.

Sandpiper CDN's co-founder, Andrew Swart, is a named inventor on many of Sandpiper's patents, including patents that were expressly incorporated by reference into the '053, '173, and '692 patents. Andrew was also the founder of Sandpiper Networks, which was the company that originally developed the earliest CDN patents currently pending before the Board. Moreover, Andrew remained involved in each of the companies that subsequently acquired the patents, including Level 3 Communications (the prior assignee of the patents) and Sandpiper CDN (the current assignee).

Furthermore, in addition to acquiring the entire portfolio of CDN patents from Level 3 Communications, Sandpiper CDN also acquired all of the relevant CDN software. This CDN software was originally developed by Andrew Swart and his team at Sandpiper Networks, and further innovated upon over the years by Sandpiper Networks' successors-in-interest, including most recently at Level 3 Communications. The Sandpiper CDN patents at issue before the PTAB were developed in connection with that software.

Thus, contrary to Petitioner's allegations in at least Section II.A, Sandpiper CDN is closely and directly related to the technology at issue in this petition.

Sandpiper and Microsoft have met and conferred but reached an impasse.

Microsoft has indicated that it opposes Sandpiper's request to correct these misstatements through a Patent Owner reply to demonstrate direct connection between predecessor companies and the current patent owner.

Thank you

Best regards,

Jason Eisenberg – Counsel for Patent Owner



Jason Eisenberg (He/Him/His)

Director, Chair Reissue, Reexamination and Supplemental Examination Practice

Sterne, Kessler, Goldstein & Fox P.L.L.C.

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